IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 7664 of 2005

Between:

1 M/s. Brigade Bar & Restaurant, IL-17, D.No.7-119/1, Opp. CCMB, Habsiguda, Kapra MUnicipality,
Ranga Reddy District, rep. by its Licencee- B. Ravinder Reddy.
2 M/s. S.S.R.Pleasant Bar & Restaurent IL-17, D.No.7-119/1, to 7, Nacharam, Habsiguda, R.R.District,
rep. by its L:icencee G. Saritheswar Rao.

..... PETITIONERS

AND

1 The Proh & Excise Superintendent, R.R.District at Hyderabad.
2 The Commissioner of Proh & Excise, Govt of A.P., at Hyderabad.
3 The Proh & Excise Inspector, SHO, Excise Station UPPAL, R.R.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in not conducting the re-measurement from boundary wall of the Osmania University to the entrance of the petitioners premises from the public way and not implement the orders of this Hon'ble Court as illegal, arbitrary, high handed and against principles of natural justice and further direct the respondents to conduct the re-measurement from boundary wall of the Osmania University to the entrance of the petitioners premises from the public way in the presence of the Advocate Commissioner and pass such other order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.T. AMARNATH GOUD

Counsel for the Respondents 1 to 3: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following :

ORAL ORDER

Heard both sides.

In this Writ Petition, the petitioner is seeking a writ of Mandamus, declaring the action of the respondents in not conducting the re-measurement from boundary wall of the Osmania University to the entrance of the petitioners premises from the public way and in not implementing the orders of this court as illegal, arbitrary and direct the respondents to conduct the re-measurement from boundary wall of the Osmania University to the entrance of the petitioners premises from the public way in the presence of the Advocate Commissioner.

The brief facts of the case are that the respondents issued IL-17 licence in favour of the first petitioner vide Licence No. 682, dated 10.10.2001 for running the business of Bar and Restaurant under the name and style of M/s Brigade Bar and Restaurant. Respondents also issued IL-17 licence in favour of the second petitioner vide licence No. 712, dated 4.2.2002 for running the business of Bar and Restaurant under the name and style of M/s S.S.R. Pleasant Bar and Restaurant. Both licenses were issued after complying with Rule 6 of A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licenses) Rules, 1993 and Rule 29 of A.P. Indian Liquor and Foreign Liquor Rules 1970 and Licenses are valid for the excise year 01.4.2004 to 31.3.2005 and the same are renewable for further period of three months form 1.4.2005. While so, the respondents issued a show cause notice in Cr.No.6605/04/CPE/G1-1 dated 22.2.2005 placing reliance on the judgment rendered in W.P.No. 7602 of 2003 and in W.P.No.25979 of 2003 dated 27.1.2004, which pertains to running of a toddy shop, R.R. District within the prohibited distance from Osmania University, therefore, respondents directed the petitioners to shift the Bar and Restaurant from existing business premises. Aggrieved by the same, the present Writ Petition has been filed.

The learned counsel appearing for the petitioners submits that the respondents did not give any opportunity to the licensee before issuing the

impugned notice dated 22.2.2005 and the version of the excise officials that the distance between the boundary wall of Osmania University Campus and the licenced premises is 18 mts. is disputed and no enquiry is conducted in the presence of the licencees and they are not aware of the so called enquiry conducted by the Excise Officials. He also submits that the enquiry report is not furnished to the licencees and therefore, the action of the respondents is against the principles of natural justice. Hence, he requests this court that the remeasurement should be done by the respondents in the presence of the Advocate Commissioner. He relied on the judgment rendered by this court in W.P.No. 5723 of 2005 dated 24.3.2005, wherein this court dismissed the Writ Petition giving liberty to the petitioners to make an application to the respondents to measure the distance as held by the Division Bench of this Court in Writ Appeal Nos. 304 and 306 of 2004 and upon such verification of the distance, if it is found that the stipulated distance of 50 metres is in existence, the case of the petitioners may be considered. Therefore, the learned counsel appearing for the petitioners requests that the case of the petitioners may be considered.

On the other hand, the learned Government Pleader appearing for the respondents produced a letter Rc.No. Spl/2004/Upl dated 26.3.2004, wherein it is stated that there is a wall of Osmania University and it is just adjacent to the backside of M/s Brigade Bar and Restaurant and the distance between wall of Osmania University and the above Bar is 16 mts.

The question that calls for consideration is whether the licence granted to the petitioners herein, will create any nuisance at the compound wall of the Osmania University, before considering the relief sought by the petitioner. Before filing of this Writ Petition also, earlier the subject matter of the writ petition turned around in this court.

Therefore, considering the facts and circumstances of the case, no excise shop of any category whatever shall be permitted to function within the prohibited distance measured from the outer limit of the campus of the Osmania University, and in view of the fact that if the petitioners start the business adjacent to the Osmania University, it will create not only law and order problem but also disturb the peaceful atmosphere at the University Campus and, therefore, the request of the petitioners in this Writ Petition, to direct the respondents to re-measure the distance, is rejected.

The Writ Petition fails and accordingly, the same is dismissed. No order as to costs.

ELIPE DHARMA RAO,J

DATED: 25.04.2005

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To

1 The Proh & Excise Superintendent, R.R.District at Hyderabad.
2 The Commissioner of Proh & Excise, Govt of A.P., at Hyderabad.
3 The Proh & Excise Inspector, SHO, Excise Station UPPAL, R.R.District.

4. Two CCs to G.P. for Prohibition and Excise, High Court of A.P.,. Hyderabad. (OUT)

5. Two CD copies.

6. 1 CC to MR. T. AMARNATH GOUD